

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Scott Stowers, Magistrate
Cause No. 49D09-0509-JC-37628

August 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Chief Judge

Natalie Lanham (“Mother”) appeals the trial court’s determination that her child, S.L., was a Child in Need of Services (“CHINS”). She raises one issue, which we restate as whether sufficient evidence was presented to support the trial court’s determination.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother has one child, S.L., who was born on December 17, 2002. The father of S.L. is unknown to Mother. At approximately 11:00 p.m. on August 5, 2005, Mother and a friend were sitting on her back porch talking. S.L. was also outside on the porch playing. S.L. wanted to go inside to watch a movie, so Mother took her inside to do so. Approximately twenty minutes later, S.L. had fallen asleep on the sofa while watching the movie. Mother and her friend decided to take a walk around the apartment complex because the friend was interested in renting an apartment there. Mother’s roommate was very ill at the time and was in his room watching television. Mother told her roommate that she was going for a walk and that S.L. was asleep on the sofa. During her walk, Mother saw a police car enter the apartment complex.

When she returned to the apartment, Mother discovered that S.L. was no longer on the sofa or in the apartment. Mother went outside to search for S.L. and found a police officer who had S.L. in her custody. A neighbor had called the police when she saw a two-year old wandering around the apartment complex without adult supervision. After speaking with Mother, the police removed S.L. and took her to Youth Emergency Services. Brittney Carelock, a case manager at the Marion County Department of Child Services (“DCS”), was called when S.L. was taken to Youth Emergency Services. The police had filed a report with the DCS that a two-year old had been outside alone around several retention ponds and that everyone in the household was intoxicated.

Carelock was assigned to the case and began her investigation by calling Mother. Mother explained what had occurred that evening and denied being intoxicated. After conducting her investigation, Carelock determined that Mother’s roommate was an inappropriate caregiver for S.L. because he had been intoxicated at the time Mother left the child in his care, had allowed S.L. to leave the apartment, and had failed to prevent S.L. from wandering around outside of the apartment and around retention ponds for an unknown amount of time. Additionally, the roommate was very ill and not feeling well when Mother left S.L. in his care. Carelock discussed the case with her supervisor and determined that the family would benefit from services and decided that an Informal Adjustment should be offered to the family. DCS determined that an Informal Adjustment was appropriate because Mother had neglected S.L. and left her with an inappropriate caregiver. Mother voluntarily signed the Informal Adjustment, and S.L. was returned to her care.

As part of the Informal Adjustment, Carelock referred Mother for a parenting assessment, which included a drug and alcohol screening. Parenting assessments involve discussions with parents about their lives, including their childhood, relationships, legal involvements, substance abuse history, and the history of their children. Emily Haile, a clinician at Midtown Child and Adolescent Services, performed the parenting assessment at Mother's home on September 21, 2005. Haile spent over three and a half hours talking with Mother and observing Mother's interactions with S.L. During the assessment, Haile noted that the interaction between Mother and S.L. was "very unusual in that [Mother] was extremely frustrated with her daughter the whole time." *Tr.* at 50. Mother yelled at S.L., told S.L. that she was going to "beat her butt," spanked S.L.'s bottom, slapped her arm, and grabbed S.L. by the arm and tossed her on the couch. *Id.* Mother also told S.L. that she "was going to knock her out." *Id.* Mother told Haile that she did not know how to discipline S.L. and that nothing worked for her.

During the assessment, S.L. slapped Haile in the face, and said, "don't hurt my mommy." *Id.* at 54. S.L. also tried to take Haile's glasses off of her face. All of these observations by Haile caused her to worry about Mother's parenting skills. After talking to and observing Mother for three and a half hours, Haile asked Mother to submit to a drug and alcohol screening. Mother did not complete the screening because she claimed that she was unable to urinate. Because Mother did not complete the drug and alcohol screening, this was considered a refusal, and she was deemed to be non-compliant in the parenting assessment.

When Carelock received a report of Haile's parenting assessment, she had a conference with her supervisor and division manager, and they decided a CHINS petition

should be filed. This was deemed necessary in order to alleviate the conditions in the home that led to involvement by DCS. The CHINS petition was filed on September 26, 2005. A fact-finding hearing was held on December 20, 2005, and at the conclusion of the hearing, the trial court determined that S.L. was a CHINS. Mother now appeals.

DISCUSSION AND DECISION

The Fourteenth Amendment of the United States Constitution protects the rights of parents to establish a home and raise their children. *In re L.V.N.*, 799 N.E.2d 63, 68 (Ind. Ct. App. 2003). A parent's right to raise his or her children is not unlimited, however, because the state had a compelling interest in protecting the welfare of children. *In re E.M.*, 581 N.E.2d 948, 952 (Ind. Ct. App. 1991), *trans. denied*. "When the parents neglect, abuse, or abandon their children, the state has the authority under its *parens patriae* power to intervene. *Id.* at 953.

Under IC 31-34-1-1:

A child is a child in need of services if before the child becomes eighteen (18) years of age:

- (1) the child's physical or mental condition is seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and
- (2) the child needs care, treatment, or rehabilitation that:
 - (a) the child is not receiving; and
 - (b) is unlikely to be provided or accepted without the coercive intervention of the court.

The State has the burden at trial of proving by a preponderance of the evidence that S.L. is a CHINS. *T.Y.T. v. Allen County Div. of Family and Children*, 714 N.E.2d 752, 756 (Ind. Ct. App. 1999).

Mother argues that there was insufficient evidence to support the trial court's determination that S.L. was a CHINS. We review the sufficiency of the evidence by considering only the evidence favorable to the judgment and the reasonable inferences to be drawn therefrom. *Id.* We will not reweigh the evidence or judge the credibility of the witnesses. *Id.*

In this case, the DCS presented evidence at the fact-finding hearing that S.L., who was only two years old at the time, was found wandering alone around Mother's apartment complex and several retention ponds late at night. Mother had left S.L. in the care of her roommate, who had been in another room and did not notice that S.L. had left the apartment. Evidence was presented that the police who responded believed that both Mother and her roommate were intoxicated. Additionally, Haile's observations during the parenting assessment presented sufficient evidence that Mother lacked proper parenting skills. During the assessment, Mother yelled at S.L., spanked her on the bottom and slapped her on the arm, told S.L. that she was going to beat her butt, and grabbed S.L. by the arm and tossed her on the couch. At one point, Mother also told S.L. that she was going to knock her out. Additionally, Mother admitted to Haile that she did not know how to discipline S.L. and that nothing worked for her. Finally, when Haile requested a urine sample for a drug and alcohol screening, Mother refused to provide one because she claimed that she could not urinate, although three and a half hours had passed since Haile had arrived. We conclude that

sufficient evidence was presented to support the trial court's determination that S.L. was a CHINS.

Affirmed.

SHARPNACK, J., and MATHIAS, J., concur.